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7 JAMES RUHALLAH HARRISON,
8 Plaintiff,
9 v.
10 MANDEEP SINGH,
11 Defendant.

Case No. [21-cv-05431-JST](#)

**ORDER DENYING PLAINTIFF'S
REQUEST FOR LEAVE TO AMEND
COMPLAINT; DENYING
PLAINTIFF'S REQUESTS FOR
INJUNCTIVE RELIEF; GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

12 Re: ECF Nos. 25, 32, 35, 36
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15 Plaintiff, an inmate housed at Correctional Training Facility ("CTF"), filed this *pro se* civil
16 rights action pursuant to 42 U.S.C. § 1983, alleging that Salinas Valley State Prison ("SVSP")
17 doctor Singh failed to treat his shoulder pain, in violation of the Eighth Amendment. ECF Nos.
18 14, 17. This order addresses (1) Plaintiff's request for leave to amend his complaint to add more
19 defendants and a claim of retaliation, ECF No. 36; (2) Plaintiff's motion for injunctive relief
20 requesting that the Court order SVSP to stop denying Dr. Lameer's request that Plaintiff receive a
21 nerve conduction test, ECF No. 32; (3) Plaintiff's motion for injunctive relief requesting that the
22 Court order Defendant's counsel to contact SVSP and tell SVSP to release Plaintiff from CTF
23 restrictive housing, transfer Plaintiff back to SVSP, and stop correctional officials from retaliating
24 against him; and requesting that the Court award him \$25,000 in punitive damages for his stay in
25 restrictive housing, ECF No. 35; and (4) Defendant Singh's motion for summary judgment, ECF
26 No. 25.
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DISCUSSION

I. Plaintiff's Request for Leave to Amend Complaint (ECF No. 36)

Plaintiff has requested leave to amend his complaint to add more defendants. Plaintiff alleges that SVSP correctional officials have retaliated against him for filing this action by placing him in administrative segregation so that they would not have to remove from C-Yard and from Plaintiff's housing unit the officer who is trying to derail this action. Plaintiff seeks to amend the complaint to seek relief for these acts of retaliation. Plaintiff states that he put the SVSP warden on notice that SVSP staff is retaliating against him, and the warden has not responded. *See generally* ECF No. 36.

Plaintiff's request for leave to amend the complaint is DENIED for the following reasons.

First, Plaintiff has not attached a proposed amended complaint as required by N.D. Cal. L.R. 10-1. N.D. Cal. L.R. 10-1 provides that any party seeking to file an amended pleading must reproduce the entire proposed pleading and may not incorporate any part of a prior pleading by reference.

Second, it appears that Plaintiff's proposed amendment would be futile. The proposed amendment would likely violate the joinder requirements set forth in Fed. R. Civ. P. 20. Fed. R. Civ. P. 20(a)(2) provides that all persons "may be joined in one action as defendants if: (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2). The upshot of these rules is that "multiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2." *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). In this action, Plaintiff has alleged that defendant Singh was deliberately indifferent to his serious medical needs. Plaintiff's retaliation claims, however, appear to involve different correctional officials and arise out of a different occurrence than the alleged failure to provide constitutionally adequate medical care. If Plaintiff wishes to sue correctional officials other than defendant Singh for their alleged retaliatory acts, he must file a separate action. The Clerk is directed to send Plaintiff two copies of the court's civil

1 rights complaint form.

2 **II. Plaintiff's Requests for Injunctive Relief and Punitive Damages (ECF Nos. 32, 35)**

3 **A. Legal Standards for Requests for Injunctive Relief**

4 The Prisoner Litigation Reform Act of 1995 (“PLRA”) restricts the power of the court to
5 grant prospective relief in any action involving prison conditions. *See* 18 U.S.C. § 3626(a).
6 Section 3626(a)(2) permits the court to enter a temporary restraining order or preliminary
7 injunction “to the extent otherwise authorized by law” but requires that such an order “be narrowly
8 drawn, extend no further than necessary to correct the harm the court finds requires preliminary
9 relief, and be the least intrusive means necessary to correct that harm.” *See* 18 U.S.C.
10 § 3626(a)(2). The court must give “substantial weight to any adverse impact on public safety or
11 the operation of a criminal justice system caused by the preliminary relief.” *Id.* “A plaintiff
12 seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is
13 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities
14 tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council*,
15 555 U.S. 7, 20 (2008) (noting that such remedies are extraordinary, and not granted as of right).
16 The party seeking the injunction bears the burden of proving these elements. *Klein v. City of San*
17 *Clemente*, 584 F.3d 1196, 1201 (9th Cir. 2009). “The Ninth Circuit weighs these factors on a
18 sliding scale, such that where there are only ‘serious questions going to the merits’—that is, less
19 than a ‘likelihood of success on the merits’—a preliminary injunction may still issue so long as
20 ‘the balance of hardships tips sharply in the plaintiff’s favor’ and the other two factors are
21 satisfied.” *Short v. Brown*, 893 F.3d 671, 675 (9th Cir. 2018) (quoting *Shell Offshore, Inc. v.*
22 *Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (emphasis in original)). Even where the
23 balance tips sharply in the plaintiff’s favor, however, the plaintiff must still make the threshold
24 showing of likely success on the merits or a serious legal question. *See Leyva-Perez v. Holder*,
25 640 F.3d 962, 965 (9th Cir. 2011) (“[E]ven certainty of irreparable harm has never *entitled* one to
26 a stay.”) (emphasis in original). In addition, the issuance of a preliminary injunction is at the
27 discretion of the district court. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th
28 Cir. 2011). The standards for issuing a temporary restraining order and a preliminary injunction

1 are “substantially identical.” *Stuhlbarg Intern. Sales Co., Inc. v. John D. Brush and Co., Inc.*, 240
2 F.3d 832, 839 n.7 (9th Cir. 2001).

3 **B. ECF Nos. 32, 35**

4 Plaintiff has filed two motions for injunctive relief—ECF Nos. 32 and 35. In ECF No. 32,
5 filed while Plaintiff was housed at Salinas Valley State Prison, Plaintiff requests that the Court
6 order Salinas Valley State Prison to “stop interfering with Plaintiff[’s] outside physician orders
7 and grant whatever orders order[ed] by the physician in charge[] of Plaintiff[’s] care Dr. Lameer.”
8 ECF No. 32. In ECF No. 35, filed after Plaintiff was moved to Correctional Training Facility,
9 Plaintiff requests that the Court order Defendant’s counsel to contact SVSP and tell SVSP to
10 immediately release Plaintiff from CTF restrictive housing unit, transfer Plaintiff back to SVSP,
11 and stop the retaliation against Plaintiff; and demands \$25,000 in punitive damages for his
12 wrongful stay in restrictive housing. Plaintiff claims that he was transferred away from SVSP and
13 then placed in CTF’s restrictive housing in retaliation for filing this action and for filing a
14 grievance against Lt. Bielanski’s staff in or around late 2023. *See generally* ECF No. 35.

15 Defendant Singh opposes ECF No. 32 on the following grounds. Defendant Singh argues
16 that the Court does not have authority to grant the relief sought because the Court does not have
17 jurisdiction over Salinas Valley State Prison, a nonparty to this action; and because the Court lacks
18 subject matter jurisdiction to grant the requested relief because there is no nexus between
19 Plaintiff’s requested relief and the alleged Eighth Amendment violation at issue in this action.
20 ECF No. 34. Defendant Singh has not filed an opposition to ECF No. 35.

21 The Court DENIES the requests for a temporary restraining order (“TRO”) and
22 preliminary injunction (“PI”) in ECF Nos. 32 and 35 for the following reasons.

23 First, the injunctive relief sought in ECF Nos. 32 and 35 does not relate to the dispute
24 being litigated. “[T]here must be a relationship between the injury claimed in the motion for
25 injunctive relief and the conduct asserted in the underlying complaint. This requires a sufficient
26 nexus between the claims raised in a motion for injunctive relief and the claims set forth in the
27 underlying complaint itself.” *Pacific Radiation Oncology, LLC v. Queen’s Med. Ctr.*, 810 F.3d
28 631, 633 (9th Cir. 2015). There is a sufficient nexus if the interim order “would grant ‘relief of the

1 same character as that which may be granted finally.”” *Id.* (citation omitted); *see, e.g., id.* at 636-
2 38 (district court properly denied plaintiff’s request for an injunction to prevent HIPAA violation,
3 where plaintiff had not asserted a claim for a HIPAA violation). The amended complaint alleges
4 an Eighth Amendment violation for deliberate indifference to Plaintiff’s serious medical needs,
5 whereas the injunctive relief requests allege a First Amendment retaliation claim. The factual
6 allegations and legal claim underlying the requests for injunctive relief are distinct from the factual
7 allegations and legal claims in the operative complaint and would not be the proper basis for
8 interim relief. *Pacific Radiation Oncology, LLC.*, 810 F.3d at 633 (plaintiff not entitled to
9 injunctive relief based on claims not pled in complaint because “court’s equitable power lies only
10 over the merits of the case or controversy before it.”).

11 Second, the only defendant in this action is SVSP doctor Singh. Fed. R. Civ. P. 65(d)
12 provides that an injunction is binding only on parties to the action, their officers, agents, servants,
13 employees and attorneys and those “in active concert or participation” with them. Fed. R. Civ. P.
14 65(d). Neither SVSP nor the correctional officials allegedly retaliating against Plaintiff are parties
15 to this action, or in active concert or participation with defendant Singh. Defendant’s counsel’s
16 representation of Plaintiff does not render her an agent of SVSP for the purposes of the injunctive
17 relief sought, and Defendant’s counsel does not have the authority to order SVSP to take action.

18 The Court therefore DENIES Plaintiff’s requests for injunctive relief as set forth in ECF
19 Nos. 32 and 35 because the Court lacks subject matter jurisdiction over the relief sought and lacks
20 personal jurisdiction over SVSP. *See Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“A
21 federal court may issue an injunction if it has personal jurisdiction over the parties and subject
22 matter jurisdiction over the claim; it may not attempt to determine the rights of persons not before
23 the court.”).

24 **III. Defendant’s Motion for Summary Judgment**

25 **A. Legal Standard for Summary Judgment Motion**

26 Summary judgment is proper where the pleadings, discovery and affidavits show that there
27 is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
28 law.” *See Fed. R. Civ. P. 56(a).* Material facts are those that may affect the outcome of the case.

1 See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is
2 genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving
3 party. *See id.*

4 A court shall grant summary judgment “against a party who fails to make a showing
5 sufficient to establish the existence of an element essential to that party’s case, and on which that
6 party will bear the burden of proof at trial [,] . . . since a complete failure of proof concerning an
7 essential element of the nonmoving party’s case necessarily renders all other facts immaterial.”
8 See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). The moving party bears the initial
9 burden of identifying those portions of the record that demonstrate the absence of a genuine issue
10 of material fact. *Id.* at 323. The burden then shifts to the nonmoving party to “go beyond the
11 pleadings and by [his] own affidavits, or by the ‘depositions, answers to interrogatories, and
12 admissions on file, ‘designate ‘specific facts showing that there is a genuine issue for trial.’” *See*
13 *id.* at 324 (citing Fed. R. Civ. P. 56(e)). “A scintilla of evidence or evidence that is merely
14 colorable or not significantly probative does not present a genuine issue of material fact”
15 precluding summary judgment. *See Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir.
16 2000).

17 For purposes of summary judgment, the court must view the evidence in the light most
18 favorable to the non-moving party, drawing all justifiable inferences in that party’s favor. *AXIS*
19 *Reinsurance Co. v. Northrop Grumman Corp.*, 975 F.3d 840, 844 (9th Cir. 2020). If, as to any
20 given material fact, evidence produced by the moving party conflicts with evidence produced by
21 the nonmoving party, the Court must assume the truth of the evidence set forth by the nonmoving
22 party with respect to that material fact. *Furnace v. Sullivan*, 705 F.3d 1021, 1026 (9th Cir. 2013).
23 However, facts must be viewed in the light most favorable to the nonmoving party only if there is
24 a “genuine” dispute as to those facts. *Scott v. Harris*, 550 U.S. 372, 380 (2007). The court’s
25 function on a summary judgment motion is not to make credibility determinations or weigh
26 conflicting evidence. *Manley v. Rowley*, 847 F.3d 705, 711 (9th Cir. 2017).

27 **B. Legal Standard for Eighth Amendment Medical Needs Claim**

28 Deliberate indifference to a prisoner’s serious medical needs violates the Eighth

1 Amendment's proscription against cruel and unusual punishment. *See Estelle v. Gamble*, 429 U.S.
2 97, 104 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled in part on*
3 *other grounds by WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en
4 banc). A determination of "deliberate indifference" involves an examination of two elements: the
5 seriousness of the prisoner's medical need and the nature of the defendant's response to that need.
6 *See McGuckin*, 974 F.2d at 1059. A "serious" medical need exists if the failure to treat a
7 prisoner's condition could result in further significant injury or the "unnecessary and wanton
8 infliction of pain." *McGuckin*, 974 F.2d at 1059 (citing *Estelle*, 429 U.S. at 104). A prison
9 official is deliberately indifferent if he knows that a prisoner faces a substantial risk of serious
10 harm and disregards that risk by failing to take reasonable steps to abate it. *Farmer v. Brennan*,
11 511 U.S. 825, 837 (1994). The prison official must not only "be aware of facts from which the
12 inference could be drawn that a substantial risk of serious harm exists," but he "must also draw the
13 inference." *Id.* If a prison official should have been aware of the risk, but was not, then the
14 official has not violated the Eighth Amendment, no matter how severe the risk. *Gibson v. Cty. of*
15 *Washoe*, 290 F.3d 1175, 1188 (9th Cir. 2002), *overruled on other grounds by Castro v. Cnty. of*
16 *Los Angeles*, 833 F.3d 1060 (9th Cir. 2016). In order for deliberate indifference to be established,
17 therefore, there must be a purposeful act or failure to act on the part of the defendant and resulting
18 harm. *See McGuckin*, 974 F.2d at 1060. Under the relevant standard, "prison officials who
19 actually knew of a substantial risk to inmate health or safety may be found free from liability if
20 they responded reasonably to the risk, even if the harm ultimately was not averted." *Farmer*, 511
21 U.S. at 844 ("A prison official's duty under the Eighth Amendment is to ensure reasonable
22 safety") (internal quotation marks and citation omitted). To be deliberately indifferent, a prison
23 official must have a subjective "state of mind more blameworthy than negligence," akin to
24 criminal recklessness. *Id.* at 835, 839-40.

25 "A difference of opinion between a prisoner-patient and prison medical authorities
26 regarding treatment does not give rise to a § 1983 claim." *Franklin v. Oregon*, 662 F.2d 1337,
27 1344 (9th Cir. 1981). Similarly, a showing of nothing more than a difference of medical opinion
28 as to the need to pursue one course of treatment over another is insufficient, as a matter of law, to

1 establish deliberate indifference. *See Toguchi v. Chung*, 391 F.3d 1051, 1058-60 (9th Cir. 2004).
2 In order to prevail on a claim involving choices between alternative courses of treatment, a
3 plaintiff must show that the course of treatment the doctors chose was medically unacceptable
4 under the circumstances and that he or she chose this course in conscious disregard of an excessive
5 risk to plaintiff's health. *Toguchi*, 391 F.3d at 1058; *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th
6 Cir. 1996). A claim of medical malpractice or negligence is insufficient to make out a violation of
7 the Eighth Amendment. *See Toguchi*, 391 F.3d at 1060-61.

8 **C. Factual Background**

9 The following facts are undisputed unless otherwise noted.

10 Plaintiff first complained of pain in his right shoulder in or about 2015. On April 2, 2015,
11 Plaintiff had an x-ray of his right shoulder. In or about 2017, Plaintiff had a steroid injection,
12 which helped with the pain. ECF No. 25-1 at 7, 10, 16, 17.

13 From September 2018 to November 2019, Dr. Singh was Plaintiff's primary care provider.
14 ECF No. 25-1 at 1-5 ("Singh Decl.") ¶¶ 1, 4. During this time period, defendant Singh met with
15 Plaintiff five times: September 11, 2018; and March 26, July 15, September 9, and November 5,
16 2019. After November 9, 2019, another physician took over as Plaintiff's primary care physician.
17 Singh Decl. ¶ 4.

18 The Court reviews below Plaintiff's medical treatment from September 2018 to May 2023.

19 **Defendant Singh's First Evaluation of Plaintiff.** In September 2018, defendant Singh
20 became Plaintiff's primary care provider. On September 11, 2018, defendant Singh examined
21 Plaintiff for the first time. Defendant Singh conducted a physical examination of Plaintiff's right
22 arm, which indicated no tenderness in the right shoulder and normal range of motion in the right
23 shoulder and that Plaintiff was able to elevate his right arm 180 degrees. Defendant Singh
24 diagnosed Plaintiff as having rotator tendinitis in the right shoulder. Plaintiff reported doing
25 jumping jacks and pull-ups for an hour daily. Plaintiff reported that a cortisone shot a year prior
26 helped with the right shoulder pain and requested another cortisone shot. Per Plaintiff's request,
27 Defendant Singh requested that medical staff schedule Plaintiff for a steroid injection for his right
28 shoulder. Singh Decl., ¶¶ 4-6; ECF No. 25-1 at 7, 10. Plaintiff requested an MRI for his right

1 arm, but defendant Singh denied the request. ECF No. 25-3 at 8.

2 On November 19, 2018, per the request for services (“RFS”) submitted by defendant
3 Singh, Plaintiff was administered a steroid injection in his right shoulder. ECF No. 25-1 at 11-12.

4 On March 7, 2019, Plaintiff was seen by medical staff Bourne. Plaintiff informed Bourne
5 that he continued to have chronic pain in his right shoulder. ECF No. 25-1 at 15.

6 **Defendant Singh’s Second Evaluation of Plaintiff.** On March 26, 2019, Plaintiff was
7 seen by defendant Singh for complaints of asthma and right shoulder pain. Plaintiff reported that
8 he continued to experience pain in the right shoulder; that the pain was intermittent; that the pain
9 was aggravated when he performed dips, pull-ups, and push-ups; and that he did not experience
10 pain when at rest. Plaintiff also reported that the November 2018 steroid injection had failed to
11 address the pain. Defendant Singh conducted a physical examination of Plaintiff’s right arm, and
12 noted that Plaintiff had normal range of motion, normal strength, no atrophy, and no tenderness on
13 palpitation of the shoulder. Plaintiff did not report any impairment of his activities of daily living.
14 Defendant Singh suggested physical therapy to treat the shoulder, but Plaintiff refused, stating that
15 he had tried it in the past and it had been ineffective. Defendant Singh ordered an x-ray of the
16 right shoulder and recommended that Plaintiff avoid exercises that exacerbated the pain, such as
17 dips and pull-ups. ECF No. 25-1 at 13-14. Plaintiff requested an MRI for his right arm, but
18 defendant Singh denied the request. ECF No. 25-3 at 8.

19 On April 4, 2019, an x-ray was taken of Plaintiff’s right shoulder. The x-ray found no
20 acute fracture, acute dislocation, or acute joint abnormality. ECF No. 25-1 at 16.

21 On April 24, 2019, Plaintiff was seen by Dr. Lam for a follow-up appointment. Plaintiff
22 reported having recurrent discomfort pain in the right shoulder with increased pain when he tried
23 to raise his right arm overhead. ECF No. 25-1 at 17. Dr. Lam observed no weakness or numbness
24 in Plaintiff’s right arm, forearm, or hand; and Plaintiff reported that he was able to maintain daily
25 activities except that he could not do many push-ups due to the right shoulder pain. ECF No. 25-1
26 at 17.

27 In July 2019, Plaintiff injured his right index finger playing sports. Dr. Javate ordered an
28 x-ray of the right hand, which took place on July 3, 2019. ECF No. 25-1 at 20.

1 **Defendant Singh's Third Evaluation of Plaintiff.** On July 15, 2019, Plaintiff was seen
2 by defendant Singh for a follow-up regarding the July 3, 2019 x-ray. Plaintiff informed defendant
3 Singh that he had sustained an injury in his right index finger while playing handball. The right
4 index finger was swollen at the time of injury, but not at the time of the appointment. Plaintiff
5 was able to make a fist but reported pain at his right MCP joint. Plaintiff requested physical
6 therapy to address the stiffness, so defendant Singh ordered a course of physical therapy.
7 Defendant Singh recommended that Plaintiff file a request for healthcare services (CDC Form
8 7362) if the stiffness and pain did not resolve over the next two weeks. Plaintiff did not report
9 shoulder pain during this visit. Singh Decl., ¶ 9; ECF No. 25-1 at 19-20. Plaintiff requested an
10 MRI for his right arm, but defendant Singh denied the request. ECF No. 25-3 at 8.

11 **Defendant Singh's Fourth Evaluation of Plaintiff.** On September 9, 2019, Plaintiff was
12 seen by defendant Singh in response to his complaints of asthma and shoulder pain. Plaintiff
13 reported having reinjured the shoulder approximately four weeks prior. Plaintiff reported that the
14 shoulder pain was worsening, limiting his ability to exercise and waking him at night; and that
15 most movement aggravated the pain, including sleeping on the right shoulder and
16 abduction/flexion. Plaintiff reported still being able to independently complete his activities of
17 daily living. Plaintiff stated that he was only taking pain medication as needed. Defendant Singh
18 examined Plaintiff's right hand and noted that Plaintiff was not able to make a complete fist,
19 though he could make an almost complete fist; that Plaintiff had mild stiffness in the second
20 finger, the pain was mostly located along the second medial metacarpal; and that the area was non-
21 tender. Defendant Singh diagnosed Plaintiff as having rotator cuff tendinitis with worsening and
22 persistent right shoulder pain. Defendant Singh put in a request for an evaluation for orthopedic
23 surgery, and prescribed Plaintiff 650 mg Tylenol and capsaicin cream for pain relief. ECF No. 25-
24 1 at 21-24. Plaintiff requested an MRI for his right arm, but defendant Singh denied the request.
25 ECF No. 25-3 at 8.

26 On September 10, 2019, SVSP doctor Bright denied the request for an evaluation for
27 orthopedic surgery on the following grounds. Dr. Bright's review of Plaintiff's medical records
28 indicated that he was functional, not only with activities of daily living, but also was performing

1 pull-ups and push-ups, and able to play sports, including playing handball with his right arm as
2 recently as July 2, 2019. Dr. Bright concluded that, based on these findings, surgery was not
3 expected to improve Plaintiff's outcome. Bright Decl. ¶ 11; ECF No. 25-1 at 24.

4 On October 3, 2019, Plaintiff was seen by SVSP doctor Saravi in response to his complaint
5 of continuing pain in the right shoulder. Plaintiff reported that he had a sharp and burning pain in
6 his right shoulder with a 9/10 intensity; that the pain sometimes radiated to the wrist; that the pain
7 often woke him up at night; and that his functional limitations included discomfort when lying on
8 his right side, difficulty showering, and difficulty with overhead movements. Dr. Saravi noted
9 that Plaintiff had range of motion and strength deficits that were limiting his ability to carry out his
10 activities of daily living. Dr. Saravi diagnosed Plaintiff as having tendinitis of the right rotator
11 cuff and recommended skilled physical therapy to address the issues. Dr. Saravi noted that a
12 partial tear could not be ruled out. Dr. Saravi requested an MRI for Plaintiff; and prescribed pain
13 medication and three sessions of physical therapy spaced one to three weeks apart. ECF No. 25-1
14 at 25-27. On October 7, 2019, Dr. Bright denied the request for an MRI because it did not meet
15 the InterQual criteria and requested that the provider resubmit the request after reviewing the
16 InterQual criteria for MRI. ECF No. 25-1 at 28, 30; ECF No. 25-2 at 30.

17 **Defendant Singh's Fifth Evaluation of Plaintiff.** On November 5, 2019, Plaintiff was
18 seen by defendant Singh regarding the denied MRI. Plaintiff reported that he could still exercise
19 but avoided doing certain activities such as dips. After examining Plaintiff, Defendant Singh
20 concluded that he suspected that Plaintiff had tendinitis and that it was unlikely that Plaintiff had a
21 rotator cuff tear. Based on this conclusion, defendant Singh denied Plaintiff's MRI request,
22 stating that the treatment plan would not change or be dependent on the MRI results. Defendant
23 Singh prescribed continued physical therapy and a steroid injection if there were no improvement.
24 ECF No. 25-1 at 30-31. Bright Decl. ¶ 13; ECF No. 25-3 at 8. This was defendant Singh's last
25 encounter with Plaintiff. After this date, another physician took over as Plaintiff's primary
26 physician. Singh Decl. ¶ 4.

27 Between June 7, 2019 and January 23, 2020, Plaintiff had eight physical therapy sessions
28 with physical therapist Boller. ECF No. 25-1 at 33. On January 23, 2020, Boller reported that

1 Plaintiff's functional mobility and self-management of his symptoms had improved, and that
2 skilled physical therapy was no longer indicated. ECF No. 25-1 at 35, 32.

3 On April 20, 2020, Plaintiff was seen by doctor Nguyen to review his expired chrono for
4 lifting restrictions and special cuffing. Plaintiff reported that he continued to feel pain in the right
5 shoulder. Dr. Ngueyn told Plaintiff that he would consider ordering an MRI/CT for Plaintiff if
6 Plaintiff met the InterQual criteria. ECF No. 25-1 at 32.

7 On April 21, 2020, physical therapist Boller examined Plaintiff's right shoulder. He
8 reported that Plaintiff had improved range of motion immediately after joint mobilization of his
9 shoulder, but the limitations on movement returned minutes later. Boller concluded that skilled
10 physical therapy was not recommended to address these issues because Plaintiff's condition had
11 not improved; recommended that Plaintiff's primary care physician consider more aggressive
12 treatment before sending Plaintiff back to physical therapy; and recommended permanent waist
13 chain chronos to decrease the healthcare costs of Plaintiff re-injuring himself during cuffing. ECF
14 No.25-1 at 33-4.

15 On May 14, 2020, Plaintiff had a follow-up appointment with Dr. Nguyen. Dr. Nguyen
16 diagnosed Plaintiff with tendinitis of the right rotator cuff. Dr. Nguyen put in a request for an
17 MRI. The MRI was performed on May 14, 2020, and indicated a large full-thickness rotator cuff
18 tear. ECF No. 25-1 at 35-38.

19 On September 9, 2020, Plaintiff was seen by outside orthopedic surgeon Dr. Lameer, who
20 recommended a magnetic resonance arthrogram of the right shoulder, which was performed on
21 November 12, 2020. ECF No. 25-1 at 40-41. The arthrogram indicated full-thickness tearing of
22 the supraspinatus and infraspinatus tendon with associated retraction. ECF No. 25-1 at 41. On
23 July 30, 2021, Dr. Lameer did surgery to repair the tear in the right rotator cuff. ECF No. 25-1 at
24 42. Despite the surgery, Plaintiff still suffers from right shoulder pain. ECF No. 25-1 at 43-47. In
25 or around March 2023, an MRI arthrogram revealed a new, separate, full thickness tear of
26 approximately 50% of the tendon of the supraspinatus at the Musculo-tendinous junction. ECF
27 No. 25-1 at 44-47. Dr. Lameer administered a steroid injection on May 8, 2023.

28 **D. Analysis**

1 Defendant Singh argues that she is entitled to summary judgment because the undisputed
2 evidence shows that she affirmatively and appropriately responded to Plaintiff's medical needs,
3 and that, at most, the evidence demonstrates a difference of opinion between herself and Plaintiff
4 which does not rise to the level of a constitutional violation. *See generally* ECF No. 25.

5 Plaintiff opposes defendant Singh's summary judgment motion on the following grounds.
6 Plaintiff disputes defendant Singh's claim that Plaintiff did not complain of right shoulder pain
7 prior to September 11, 2018, stating that defendant Singh was aware that Plaintiff has had right
8 shoulder pain since April 17, 2015 as reported in his medical file. ECF No. 29 at 2, 6, 7.
9 Defendant Singh was aware that Plaintiff's shoulder pain was worsening and affecting his ability
10 to complete activities of daily living, as reflected in the notes that defendant Singh made
11 memorializing the September 9, 2019 examination of Plaintiff and in notes that Dr. Lam made
12 memorializing his or her April 24, 2019 examination of Plaintiff. ECF No. 29 at 3, 8. Defendant
13 Singh denied him medical care when she filed to resubmit the MRI request with the InterQual
14 criteria. ECF No. 29 at 5. On September 19, 2019, Defendant Singh ignored the physical
15 therapist when the physical therapist informed her that something was wrong with Plaintiff's right
16 shoulder, and she also denied the physical therapist order for a sling. ECF No. 29 at 4-5, 11. It
17 was clear that Plaintiff had a rotator cuff tear and needed an MRI, as two other doctors diagnosed
18 Plaintiff with a rotator cuff tear and ordered an MRI. ECF No. 29 at 5. Defendant Singh knew
19 that what she was doing was wrong and she chose to do wrong, as shown in the attachments to
20 Plaintiff's opposition. ECF No. 29 at 4. The more Plaintiff told defendant Singh what the issue
21 was, the more agitated defendant Singh became. ECF No. 29 at 4. Dr. Bright is giving misleading
22 statements. ECF No. 29 at 3. Plaintiff argues that his medical records support his allegations, and
23 has attached as supporting exhibits the following medical records: his April 2, 2019 right shoulder
24 x-ray report; the progress notes from Dr. Lam's April 24, 2019 examination, from defendant
25 Singh's examinations on September 11, 2018, and on September 9 and November 5, 2019, and
26 from Dr. Saravi's October 3, 2019 examination; defendant Singh's September 9, 2019 request for
27 an orthopedic surgery evaluation for Plaintiff, and Dr. Bright's September 10, 2019 denial; Dr.
28 Saravi's October 3, 2019 request for an MRI, and Dr. Bright's October 7, 2019 denial; the June

1 11, 2020 MRI report; the July 31, 2019 and April 21, 2020 physical therapy assessment from Peter
2 Boller; the November 12, 2020 MRI with contrast of Plaintiff's right shoulder; a November 17,
3 2021 Request for Healthcare Services expressing concern that his right shoulder was not healing
4 correctly; a summary of his April 17, 2023 appointment with orthopedic surgeon Lameer; and
5 patient education materials titled "Surgery for Rotator Cuff Tear with Rehab." *See generally* ECF
6 No. 25.

7 The Court has carefully reviewed the record and the parties' pleadings. Viewing the
8 record in the light most favorable to Plaintiff, the Court finds that the record shows that defendant
9 Singh took reasonable steps to abate the serious risk of physical harm posed by the pain in
10 Plaintiff's right shoulder. The record indicates that defendant Singh's treatment at each
11 appointment was a reasonable response to Plaintiff's medical condition at that time. Plaintiff's
12 condition worsened over time and defendant Singh adjusted Plaintiff's treatment accordingly.

13 At defendant Singh's first evaluation of Plaintiff on September 11, 2018, Plaintiff reported
14 general pain but also the ability to do jumping jacks and pull-ups for an hour daily. A physical
15 examination indicated normal range of motion, no tenderness, and the ability raise his right arm
16 180 degrees. Defendant Singh reasonably diagnosed Plaintiff with right shoulder tendinitis and
17 ordered Plaintiff the steroid shot he requested. Plaintiff has not provided evidence from which it
18 can be reasonably inferred that defendant Singh acted unreasonably on September 11, 2018, in
19 diagnosing Plaintiff with right shoulder tendinitis and not ordering an MRI, based on the
20 symptoms reported and the examination conducted.

21 At defendant Singh's second evaluation of Plaintiff on March 26, 2019, six months after
22 the first evaluation, Plaintiff reported intermittent pain aggravated by dips, pull-ups and push-ups.
23 But Plaintiff also reported that there was no impairment of activities of daily living and no pain
24 while he was at rest. A physical examination showed that Plaintiff's right arm had normal range
25 of motion, normal strength, no atrophy, and no tenderness on palpitation. Defendant Singh
26 reasonably diagnosed Plaintiff with right shoulder tendinitis, recommended that Plaintiff avoid
27 exercises that exacerbated the pain, and ordered an X-ray. Plaintiff was seen one month later by
28 Dr. Lam, whose examination of Plaintiff confirmed that he still had no weakness in his right arm

1 at that time. Plaintiff self-reported to Dr. Lam that he was still able to continue his activities of
2 daily living. Plaintiff has not provided evidence from which it can be reasonably inferred that
3 defendant Singh acted unreasonably on March 26, 2019, in diagnosing Plaintiff with right
4 shoulder tendinitis and not ordering an MRI, based on the symptoms reported, the examination
5 conducted, and Dr. Lam's assessment a month later.

6 At defendant Singh's third evaluation of Plaintiff on July 15, 2019, nearly three months
7 after the second appointment, Plaintiff did not report shoulder pain but reported stiffness from
8 injuring his right index finger while playing sports. Defendant Singh ordered the requested
9 physical therapy. Plaintiff has not provided evidence from which it can be reasonably inferred that
10 defendant Singh acted unreasonably on July 15, 2019, in not ordering an MRI and ordering the
11 physical therapy requested by Plaintiff, based on the symptoms reported and the examination
12 conducted.

13 At defendant Singh's fourth evaluation of Plaintiff on September 9, 2019, nearly two
14 months after the third appointment, defendant Singh noticed that Plaintiff's symptoms had
15 worsened significantly and put in a request for an orthopedic surgery evaluation. Defendant Singh
16 denied Plaintiff's request for an MRI. Defendant Singh also declined to follow the physical
17 therapist's recommendation for a sling because she believed that the sling would result in stiffness
18 and decrease range of motion in the shoulder. Defendant Singh again diagnosed Plaintiff with
19 tendinitis of the right shoulder cuff. The orthopedic surgery evaluation request was denied by Dr.
20 Bright on the grounds that surgery was not expected to improve Plaintiff's outcome given that
21 Plaintiff's medical records indicated that he was functional with activities of daily living and also
22 able to play sports and do pull-ups and push-ups. Plaintiff's argument is that he should have been
23 given an MRI sooner so that the rotator cuff tear would have been discovered, and surgery
24 conducted sooner. Although defendant Singh did not order the requested MRI, she did order him
25 a consult for the outcome which he ultimately sought – surgical intervention. Moreover, the
26 record indicates that there was a difference of medical opinion as to (1) what was wrong with
27 Plaintiff's shoulder, with defendant Singh diagnosing tendinitis in September 2019 and concluding
28 that it was unlikely a rotator cuff tear, and Dr. Saravi stating in October 2019 that a partial tear

1 could not be ruled out; and (2) what was the appropriate treatment for Plaintiff's right shoulder,
2 with defendant Singh believing that surgical intervention might be necessary, Dr. Bright
3 disagreeing with the need for surgical evaluation, and Dr. Saravi ordering an MRI in October
4 2019. The fact that prison medical authorities disagreed as to the best course of treatment further
5 supports the conclusion that defendant Singh did not err or act unreasonably in concluding that
6 Plaintiff had right shoulder tendinitis and did not need an MRI. In any event, as a matter of law,
7 Plaintiff's disagreement with the defendant Singh's medical opinion as to the best course of
8 treatment does give rise to a Section 1983 claim. *Franklin*, 662 F.2d at 1344.

9 At defendant Singh's fifth evaluation of Plaintiff on November 5, 2019, defendant Singh
10 again diagnosed Plaintiff with tendinitis and recommended continued physical therapy and a
11 steroid injection if there were no improvement. Defendant Singh opined that it was unlikely that
12 he had rotator cuff tear and that an MRI was therefore unnecessary as it would not change the
13 treatment plan. That defendant Singh was wrong about whether Plaintiff had a rotator cuff tear
14 and about whether an MRI was needed does not create a triable issue of fact as to whether
15 defendant Singh's treatment decisions at the November 5, 2019 examination violated the Eighth
16 Amendment. "In order to know of [an] excessive risk, it is not enough that the person merely 'be
17 aware of facts from which the inference could be drawn that a substantial risk of serious harm
18 exists, [] he must also draw that inference.'" *Gibson*, 290 F.3d at 1188. There is nothing in the
19 record from which it can be reasonably inferred that defendant Singh knew that Plaintiff had a
20 rotator cuff tear and needed an MRI. A claim of medical malpractice or negligence is insufficient
21 to make out a violation of the Eighth Amendment. *See Toguchi*, 391 F.3d at 1060-61. Moreover,
22 other medical professionals made similar assessments around that time period. On January 23,
23 2020, the physical therapist concluded that physical therapy had been effective in that it had
24 improved Plaintiff's functional mobility and self-management of his symptoms. On April 20,
25 2020, Dr. Nguyen also declined to order an MRI for Plaintiff unless he met the InterQual criteria.

26 Plaintiff's arguments do not create a triable issue of material fact as to whether defendant
27 Singh violated the Eighth Amendment. Plaintiff fails to acknowledge that his condition when he
28 first saw defendant Singh was markedly different from when he last saw defendant Singh. The

1 appropriate medical treatment as of his final meeting with defendant Singh when his right
2 arm/shoulder was causing him severe pain and affecting his daily life was not necessarily the
3 appropriate medical treatment to be prescribed for Plaintiff at his first meeting with defendant
4 Singh when the pain was present but did not prevent Plaintiff for daily vigorous exercise. And the
5 medical reports indicate that defendant Singh provided Plaintiff with medical treatment for his
6 right shoulder – steroid injection, x-ray, physical therapy, request for surgical evaluation – even if
7 it was not the requested MRI. Moreover, Dr. Bright reports that community standards favor
8 conservative therapies such as physical therapy and anti-inflammatory and pain medications as the
9 initial treatment plan for rotator cuff tears, ECF No. 25-2 at 6, which is what defendant Singh
10 prescribed, albeit for what she believed to be tendinitis. Plaintiff has not provided any evidence
11 from which it can be reasonably inferred that defendant Singh knew that (1) Plaintiff had a rotator
12 cuff tear; or that (2) the treatments that defendant Singh prescribed – steroid injection, x-ray,
13 physical therapy, request for surgical evaluation – were not reasonable steps to abate the
14 substantial risk of serious harm that Plaintiff faced from his right shoulder pain, given the
15 symptoms he reported. In other words, Plaintiff has not demonstrated a triable issue of fact as to
16 whether defendant Singh drew the inference that Plaintiff faced a substantial risk of serious harm
17 from the treatment she prescribed. Accordingly, there is no triable issue of fact as to whether
18 defendant Singh violated the Eighth Amendment. *Gibson*, 290 F.3d at 1118. The Court GRANTS
19 defendant Singh's motion for summary judgment.

20 **E. Qualified Immunity**

21 Qualified immunity is an entitlement, provided to government officials in the exercise of
22 their duties, not to stand trial or face the other burdens of litigation. *Saucier v. Katz*, 533 U.S. 194,
23 200 (2001). The doctrine of qualified immunity attempts to balance two important and sometimes
24 competing interests—“the need to hold public officials accountable when they exercise power
25 irresponsibly and the need to shield officials from harassment, distraction, and liability who
26 perform their duties reasonably.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (internal
27 quotation marks and citation omitted). To determine whether an officer is entitled to qualified
28 immunity, the Court must consider whether (1) the officer's conduct violated a constitutional

1 right, and (2) that right was clearly established at the time of the incident. *Pearson*, 555 U.S. at
2 232. Courts are not required to address the two qualified immunity issues in any particular order,
3 and instead may “exercise their sound discretion in deciding which of the two prongs of the
4 qualified immunity analysis should be addressed first in light of the circumstances in the particular
5 case at hand.” *Id.* at 236. Courts may “exercise their sound discretion in deciding which of the
6 two prongs of the qualified immunity analysis should be addressed first in light of the
7 circumstances in the particular case at hand.” *Id.* at 236. Because there was no violation of
8 Plaintiff’s constitutional rights, as explained above, there is no necessity for further inquiry
9 concerning qualified immunity. *See County of Sacramento v. Lewis*, 523 U.S. 833, 841 n.5 (1998)
10 (“[T]he better approach to resolving cases in which the defense of qualified immunity is raised is
11 to determine first whether the plaintiff has alleged the deprivation of a constitutional right at all.”).

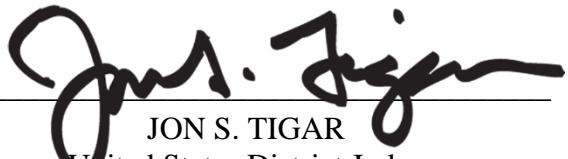
12 CONCLUSION

13 For the foregoing reasons, the Court denies Plaintiff’s requests for injunctive relief, ECF
14 Nos. 32, 25; denies Plaintiff’s request for leave to file an amended complaint, ECF No. 36; and
15 grants Defendant’s motion for summary judgment, ECF No. 25.

16 This order terminates ECF Nos. 25, 32, 35, 36.

17 IT IS SO ORDERED.

18 Dated: February 20, 2024



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JON S. TIGAR
United States District Judge